

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JEFFREY MORSE,
Plaintiff,
vs.
TEN X HOLDINGS, LLC, et al.,
Defendants.
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} Case No. 2:17-cv-00073-JAD-CWH
ORDER

Presently before the court is Plaintiff Jeffrey Morse's Motion for Enlargement of Time to Effectuate Service of Brian Pebley and for Service by Publication (ECF No. 14), filed on February 27, 2017.

Also before the court is Plaintiff's Motion to Serve Defendant Brian Pebley by Publication (ECF No. 16), filed on February 28, 2017.

Plaintiff requests a 90-day extension of time to serve Defendant Pebley and for permission to serve him by publication. Plaintiff argues there is good cause to extend time to serve because his motion was timely in that it was made on the service deadline and because Nevada's service rules allow a plaintiff 120 days to serve a defendant. In support of his motion to serve Defendant Brian Pebley by publication, Plaintiff includes his attorney's declaration stating that Plaintiff employed a process server and that service of process was attempted at four addresses in Colorado without success. (Decl. of Jonathan B. Lee (ECF No. 16) at 3.) The declaration further states that “[d]espite the Plaintiff's diligent efforts, he has not been able to locate and serve Pebley.” (*Id.*) Additionally, Plaintiff provides the process server's affidavit, which also states that service of process on Brian Pebley was unsuccessfully attempted at four separate addresses in Colorado. (Mot. to Serve Def. Brian Pebley by Publication (ECF No. 16) at Ex. 1.)

1 **I. SERVICE BY PUBLICATION**

2 Rule 4(e)(1) of the Federal Rules of Civil Procedure provides, in relevant part, that service
 3 of process on an individual that confirms with state law “in the state where the district court is
 4 located or where service is made” is proper in federal court. Rule 4(e)(1)(i) of the Nevada Rules of
 5 Civil Procedure permits service by publication “when the person on whom service is to be made
 6 resides out of the state, or has departed from the state, or cannot, after due diligence, be found
 7 within the state, or by concealment seeks to avoid service of the summons. “A party seeking
 8 service by publication under Rule 4(e) of the Nevada Rules of Civil Procedure must seek leave of
 9 court by filing an affidavit demonstrating, among other things, due diligence in attempting to
 10 personally serve the defendant. *Id.*

11 In evaluating due diligence, courts examine whether service “efforts were appropriate and
 12 reasonably calculated to accomplish service” *See Abreu v. Gilmer*, 985 P.2d 746, 749 (Nev.
 13 1999). There is no “objective, formulaic standard” for determining due diligence, but the Nevada
 14 Supreme Court has characterized the analysis as one measured by the quality of service efforts. *Id.*
 15 (“[W]e note that there is no objective, formulaic standard for determining what is, or what is not,
 16 due diligence. The due diligence requirement is not quantifiable by reference to the number of
 17 service attempts or inquiries into public records. Instead, due diligence is measured by the
 18 qualitative efforts of a specific plaintiff seeking to locate and serve a specific defendant.”).

19 Based on the evidence provided in Plaintiff’s attorney’s declaration and the process server’s
 20 affidavit, the court is unable to evaluate whether Plaintiff has demonstrated due diligence in
 21 attempting to personally serve Defendant Pebley. Although the affidavits provided state that the
 22 process server attempted service at four different addresses in Colorado, Plaintiff does not provide
 23 the court with any information regarding the due diligence that was conducted to locate Defendant
 24 Pebley, such as inquiries into public records. Thus, it is unclear how these four addresses are
 25 related to Defendant Pebley and the court is unable to evaluate the qualitative efforts made in
 26 attempting to serve Defendant Pebley at those addresses. The court therefore will deny Plaintiff’s
 27 motion without prejudice.

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1 **II. EXTENSION OF TIME TO SERVE**

2 Rule 4(m) of the Federal Rules of Civil Procedure establishes the time for service on
3 domestic defendants:

4 If a defendant is not served within 90 days after the complaint is filed, the court—on
5 motion or on its own after notice to the plaintiff—must dismiss the action without
6 prejudice against that defendant or order that service be made within a specified
7 time. But if the plaintiff shows good cause for the failure, the court must extend the
8 time for service for an appropriate period.

9 The court must extend the 90-day time limit of Rule 4(m) if the serving party shows good cause for
10 failure to serve within 90 days. *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)
11 (citing version of Rule 4(m) with 120-day deadline). If the serving party does not show good cause,
12 the court has discretion to extend time for service, or to dismiss the complaint without prejudice. *In
re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001). The court’s discretion to extend time for service, or
13 to dismiss without prejudice for failure to timely serve, is broad. *Id.*

14 Courts must determine on a case-by-case basis whether the serving party has shown good
15 cause. *In re Sheehan*, 253 F.3d at 512. Generally, good cause is equated with diligence. *Townsel
v. Contra Costa Cnty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987). A showing of good cause requires
16 more than inadvertence or mistake of counsel. *Id.* “[A]t a minimum, good cause means excusable
17 neglect.” *In re Sheehan*, 253 F.3d at 512 (quotation omitted).

18 At this time, Plaintiff has not demonstrated good cause to extend time to serve Defendant
19 Pebley. Although Plaintiff argues he timely requested the extension and that Nevada law allows for
20 120 days to serve, this does not explain whether Plaintiff has been diligent in his efforts to serve
21 Defendant Pebley. Without more information regarding Plaintiff’s efforts, the court is unable to
22 determine whether Plaintiff has been diligent. The court therefore will deny Plaintiff’s motion
23 without prejudice.

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III. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff Jeffrey Morse's Motion for Enlargement of Time to Effectuate Service of Brian Pebley and for Service by Publication (ECF No. 14) is DENIED without prejudice.

IT IS FURTHER ORDERED that Plaintiff Jeffrey Morse's Motion to Serve Defendant Brian Pebley by Publication (ECF No. 16) is DENIED without prejudice.

DATED: April 3, 2017

**C.W. Hoffman, Jr.
United States Magistrate Judge**